

## SENATE BILL NO. 114

INTRODUCED BY M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING GOVERNMENTAL ETHICS LAWS TO PROMOTE PUBLIC CONFIDENCE IN GOVERNMENT; RESTRICTING ~~A STATE~~ AN ELECTED EXECUTIVE BRANCH OFFICER OR A LEGISLATOR FROM BECOMING A LOBBYIST ~~FOR A FOR-PROFIT PRIVATE BUSINESS ENTITY~~ WITHIN 24 MONTHS OF THE TERMINATION OF OFFICE; EXTENDING THE RESTRICTION ON A FORMER EMPLOYEE CONTRACTING OR BEING EMPLOYED BY AN EMPLOYER WHO CONTRACTS WITH THE STATE OR ANY OF ITS SUBDIVISIONS INVOLVING MATTERS WITH WHICH THE FORMER EMPLOYEE WAS DIRECTLY INVOLVED DURING EMPLOYMENT TO ~~24~~ 12 MONTHS FOLLOWING THE TERMINATION OF EMPLOYMENT; AND AMENDING SECTIONS 2-2-105, 2-2-111, 2-2-201, AND 5-7-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-2-105, MCA, is amended to read:

**"2-2-105. Ethical requirements for public officers and public employees.** (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) (a) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(b) ~~A state~~ AN ELECTED EXECUTIVE BRANCH officer may not become a lobbyist ~~FOR A FOR-PROFIT PRIVATE~~

1 ~~BUSINESS ENTITY~~ within 24 months following the termination of office.

2 (4) When a public employee who is a member of a quasi-judicial board or commission or of a  
3 board, commission, or committee with rulemaking authority is required to take official action on a matter  
4 as to which the public employee has a conflict created by a personal or private interest that would directly  
5 give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in  
6 regard to the matter, the public employee shall disclose the interest creating the conflict prior to  
7 participating in the official action.

8 (5) A public officer or public employee may not perform an official act directly and substantially  
9 affecting a business or other undertaking to its economic detriment when the officer or employee has a  
10 substantial personal interest in a competing firm or undertaking."

11

12 **Section 2.** Section 2-2-111, MCA, is amended to read:

13 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this  
14 section is proof that the legislator committing the act has breached the legislator's public duty. A legislator  
15 may not:

16 (1) accept a fee, contingent fee, or any other compensation, except the official compensation  
17 provided by statute, for promoting or opposing the passage of legislation;

18 (2) seek other employment for the legislator or solicit a contract for the legislator's services by  
19 the use of the office; or

20 (3) become a lobbyist ~~FOR A FOR-PROFIT PRIVATE BUSINESS ENTITY~~ within 24 months following the  
21 termination of the legislator's term of office."

22

23 **Section 3.** Section 2-2-201, MCA, is amended to read:

24 **"2-2-201. Public officers, employees, and former employees not to have interest in contracts --**  
25 **local government waiver.** (1) Members of the legislature; state, county, city, town, or township officers;  
26 or any deputy or employee of an enumerated governmental entity may not be interested in any contract  
27 made by them in their official capacity or by any body, agency, or board of which they are members or  
28 employees. A former employee may not, within ~~6 months~~ 24 12 months following the termination of  
29 employment, contract or be employed by an employer who contracts with the state or any of its  
30 subdivisions involving matters with which the former employee was directly involved during employment.

1 In this section the term:

2 (a) "be interested in" does not include holding a minority interest in a corporation;

3 (b) "contract" does not include:

4 (i) contracts awarded to the lowest responsible bidder or proposer based on competitive bidding  
5 procedures;

6 (ii) merchandise sold to the highest bidder at public auctions;

7 (iii) investments or deposits in financial institutions that are in the business of loaning or receiving  
8 money;

9 (iv) a contract with an interested party if, because of geographic restrictions, a local government  
10 could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local  
11 government could not otherwise reasonably afford itself of the subject of a contract if the additional cost  
12 to the local government is greater than 10% of a contract with an interested party or if the contract is for  
13 services that must be performed within a limited time period and no other contractor can provide those  
14 services within that time period.

15 (c) "former employee" does not include a person whose employment with the state was  
16 involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not  
17 involving violation of the provisions of this chapter.

18 (2) The governing body of a city, town, or county may waive the application of the prohibition  
19 contained in subsection (1) for a present or former city, town, or county officer or employee who in an  
20 official capacity does not influence the decisionmaking process or supervise a function regarding the  
21 contract in question. A governing body may grant a waiver under this subsection only after publicly  
22 disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining  
23 whether to grant a waiver, the governing body shall consider the following factors, ~~where~~ when applicable:

24 (a) whether the waiver would provide to a program or project a significant benefit or an essential  
25 skill or expertise that would otherwise not be available;

26 (b) whether an opportunity was provided for open competitive bidding or negotiation;

27 (c) whether the person affected is a member of a clearly identified group of persons that is the  
28 intended beneficiary of the program or project involved in the contract; and

29 (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting  
30 the conflict will outweigh the public interest served by avoiding the conflict.

(3) A contract entered into in violation of this section is void."